

# CORRESPONDENCE

## Crime and Punishment

*To the Editor, Eugenics Review*

SIR,—I shall not trouble your readers by dealing with the numerous arguments and irrelevancies contained in the lengthy answer to my last letter. They have very little bearing upon the two questions which are at issue between us, namely, is the Death Sentence a deterrent to the potential murderer, and, second, is flogging a deterrent to those miscreants who are the only ones to whom in Scotland it may lawfully be applied?

The fact that no murderer in Scotland has been executed for thirteen years does not materially lessen the deterrent effect of the death sentence for murder. All of these persons who were convicted of murder had the sentence of death imposed upon them, and the question whether that will be commuted by the Secretary for Scotland—and formerly the Home Secretary—depends largely upon his temperament, and is not a matter upon which the potential murderer can rely. Deliberate murders in Scotland are few; probably the number is much less than in most countries on the Continent. This is due partly to the efficient system of public prosecution which prevails here under the competent charge of the Lord Advocate, and the comparative certainty of conviction, if the estimate of a Clerk of Justiciary is correct, that only one-third escape trial. The fact that every murderer in Scotland for the last thirteen years, whatever the circumstances of his crime, has had his sentence commuted, indicates a serious abuse of the powers of the Minister who has this matter in his hands. There cannot have been exceptional circumstances in every case, many of which were no doubt confirmed by a Court of Appeal, and but for the small number affected, would justify the view that the Minister is abusing his function by deliberately overriding the statutory penalty.

Two German spies were recently sentenced to death. According to their view they were martyrs of a patriotic attempt to help their native country in its war against us. Morally they did not deserve the punishment, but our legislators who sanctioned this feel that no other punishment except death can be imposed consistently with the safety of the realm. All other countries take the same view, and since the dawn of history a penalty of death for crime has always been regarded as the most powerful deterrent.

As regards flogging, Mr. Benson's admission, which is explicit—"No one would deny that flogging is a deterrent"—simply destroys any value of the Report of the 1937 Committee, with which I think every High Court Judge both in England and Scotland would completely disagree. Even the extremists do not suggest that flogging should be abolished as a means of preserving prison

discipline. It is the only deterrent which is considered adequate. The history of the legislation in regard to immoral traffic is enlightening on this subject. In Scotland it was for the first time made a crime, by an Act passed on July 22nd, 1902, to knowingly live, wholly or in part, on the earnings of prostitution. The maximum penalty for conviction, however, was limited to three months' imprisonment with hard labour. Evidently this penalty was inadequate to stamp out the crime, otherwise it is difficult to understand why Parliament found it necessary in 1912 to increase the penalty to imprisonment with or without hard labour for a term not exceeding two years, and in the case of a second or subsequent conviction the Court was empowered to sentence a male offender to be privately whipped. Although I was on the Bench for ten years after the passing of the Act, no case of the kind came before the Courts in Scotland. Then followed a period, beginning with 1923, when an average of a little more than one sentence per annum with the penalty of flogging was imposed, although in several years there was more than one. The point, however, is that so effective was this as a deterrent of crime by the individuals flogged, that only one out of the twelve underwent the penalty twice. Since 1932 the penalty has not been imposed in any case. Surely this is cogent evidence that I was right in saying that the crime has been practically stamped out in so far, at all events, as applies to the serious offenders.

How different is the experience in connection with crimes like burglary, which in Scotland can only be punished by imprisonment or penal servitude, that no number of sentences of imprisonment or penal servitude deter the professional burglar from pursuing his profession whenever he is at liberty. In those cases of flogging by sentence of English Judges for brutal cruelty to the victim added to the offence of burglary, it is seldom that burglars who have been once flogged have repeated the conduct which made them liable to a sentence of this nature.

I suppose the Prison Act of 1842 is one of the statutes which authorizes corporal punishment, but it is limited to the single case of persons discharging or aiming fire-arms or the like with the intention to injure or harm His Majesty. No case of this kind has happened in Scotland since, and it is doubtful whether it is still the Law, as the Whipping Act of 1862 provides, Section II—"that in Scotland no offenders above 16 years of age shall be whipped for theft or for crime committed against person or property." There is no recorded instance of corporal punishment having been awarded for such an offence. So much for this "inaccuracy."

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I am, etc.,  
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